United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

JANUARY TERM, 1903.

No. 1276.

202

No. 4, SPECIAL CALENDAR.

ROBINSON LAPPIN, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 21, 1903.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL

JANUARY TERM, 1903.

No. 1276.

No. 4, SPECIAL CALENDAR.

ROBINSON LAPPIN, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption	*a*	1
Information	1	1
Demurrer to information	2	2
Agreed statement of facts	4	2
Bill of exceptions	6	4
Clerk's certificate	9	5
Docket entries	10	5
Writ of error	12	6

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 17, 1903.

In the Court of Appeals of the District of Columbia

ROBINSON LAPPIN, Plaintiff in Error,
vs.
THE DISTRICT OF COLUMBIA. } No. 1276.

a In the Police Court of the District of Columbia, January Term, 1903.

DISTRICT OF COLUMBIA
vs.
ROBINSON LAPPIN. } No. 227,355. Information for Unlicensed General Broker.

Be it remembered, that in the police court of the District of Columbia, at the city of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 In the Police Court of the District of Columbia, September Term, A. D. 1902.

DISTRICT OF COLUMBIA, *ss:*

James L. Pugh, Jr., Esq., assistant corporation counsel, who, for the said District of Columbia prosecutes in this behalf in his proper person, comes here into court and causes the court to be informed and complains that Robinson Lappin, late of the District aforesaid, on the first day of July in the year A. D. one thousand nine hundred and two, and on divers other days and times between the said first day of July and the twenty-fifth day of September in the year one thousand nine hundred and two, in the city of Washington and in the District aforesaid, did engage in the business of a general broker without first having paid the tax so to do, contrary to and in violation of an act of Congress approved July 1, 1902, and constituting a law of the District of Columbia.

J. L. PUGH, JR.,
Assistant Corporation Counsel.

Personally appeared R. O. Melton this twenty-fifth day of September, A. D. 1902, and made oath before me that the facts set forth in the foregoing information are true.

[Seal Police Court of District of Columbia.]

W. H. RUFF,
Deputy Clerk of the Police Court of the District of Columbia.

2 In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA
vs.
ROBINSON LAPPIN. } No. 227,355.

The defendant says that the information filed herein is bad in substance.

THOMPSON & LASKEY,
Attorneys for the Defendant.

Among the matters of law to be argued in support of the foregoing demurrer are the following:

1. The facts averred constitute no offense under the laws in force in the District of Columbia at the time of the alleged commission thereof or at the time of the filing of the information herein.

2. Paragraph 15 of sec. 6 of the act of Congress approved July 1, A. D. 1902, upon which the said information is based, is unconstitutional and void in that it imposes a tax upon the defendant as a general broker which is not imposed upon all other general brokers conducting business in the District of Columbia.

3. Said paragraph 15 of said sec. 6 of said act does not impose a uniform tax upon all of the same class conducting the same business within said District and is, therefore, unconstitutional and void.

4. Said paragraph 15 of said sec. 6 of said act denies to the defendant the equal protection of the law as guaranteed to him by the Constitution of the United States.

3 5. Said paragraph 15 of said sec. 6 of said act does not afford the defendant the equal protection of the law in that it does not impose a uniform license tax upon all persons engaged in the business of a general broker in the District of Columbia, but discriminates in favor of general brokers who are members of a stock exchange outside of said District and doing business therein.

Service acknowledged this 11th day of October, A. D. 1902.
(Signed) JAMES L. PUGH, JR.

[Endorsed:] No. 227,355. District of Columbia *vs.* Robinson Lappin. Demurrer to information. The clerk will please file. Thompson & Laskey, att'ys for defendant.

4 In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA
vs.
ROBINSON LAPPIN. } Information No. 227,355.

The defendant's demurrer to the information of the District of Columbia having been overruled and the defendant having entered a plea of not guilty to said information, the case was submitted to the

court by counsel for the respective parties upon the following agreed statement of facts:

The defendant Robinson Lappin was some time prior to the 1st day of July, A. D. 1902, and from said 1st day of July down to the time of the filing of the information herein and since the filing thereof to the date hereof was and still is engaged at his place of business on the corner of Seventh and F streets, northwest, in the city of Washington, District of Columbia, in conducting the business of a general broker in that he solicited business from the general public by advertisement and otherwise to purchase, sell and negotiate for it securities, shares, stocks and bonds and dealt in futures on market quotations on prices or values on merchandise, shares, stocks and bonds and other securities and accepted margins on prices or values of said shares, stocks, bonds, merchandise and securities. The said defendant is not a member of a regularly organized stock exchange located outside of the District of Columbia and has not been such a member at any time since said 1st day of July. Subsequent to said 1st day of July demand was made upon said defendant by the assessor of the District of Columbia for the payment of a tax of two hundred and fifty dollars for a license to conduct his said business as a general broker in said District for one year from and after the 1st day of July, A. D. 1902, which the said defendant refused to pay, and the said assessor refused to issue said license without said payment of two hundred and fifty dollars.

That Allison C. Jenkins and Elmer E. Simpson, trading and doing business as general brokers at number 1229 F street, northwest, in said city and District, under the firm name and style of Jenkins and Simpson, on the 15th day of September, A. D. 1902, paid the collector of taxes of the District of Columbia, one hundred dollars and were granted a license by the assessor of said District to conduct the business of general brokers in said District for one year from the 1st day of July, A. D. 1902. The business of the said Jenkins and Simpson was and is the same in all respects as that above described as conducted by the defendant Robinson Lappin, the said Jenkins and Simpson being, however, at the time of the issuance to them of their said license members of a regularly organized stock exchange outside of the District of Columbia, to wit, the Denver stock exchange of the city of Denver, State of Colorado.

Counsel for the District of Columbia objecting to the relevancy and materiality of the facts set forth in the last preceding paragraph.

JAMES L. PUGH, JR.,
Assistant City Solicitor, for the District of Columbia.
THOMPSON & LASKEY,
For the Def., Robinson Lappin.

[Endorsed:] Inf. No. 227,355. District of Columbia *vs.* Robinson Lappin. Agreed statement of facts. Copy.

6 In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA
vs.
ROBINSON LAPPIN. } Information No. 227,355.

Defendant's Bill of Exceptions.

Be it remembered that at the trial of this case before Charles S. Bundy, Esquire, acting judge of the police court, the plaintiff and the defendant to maintain the issues on their respective parts joined, offered and gave to the court the agreed statement of facts herein and no other evidence:

And thereupon on the 31st day of December, A. D. 1902, the defendant moved the court to dismiss the case and enter judgment for the defendant upon the grounds:

1st. That the facts established by the evidence constitute no offense under the law.

2nd. That paragraph 15 of section 6 of the act of Congress approved July 1st, A. D. 1902, is unconstitutional and void in that it imposes a tax upon the defendant as a general broker which is not imposed upon all other general brokers conducting business in the District of Columbia.

3rd. Said paragraph 15 of section 6 of said act does not impose a uniform tax upon all of the same class conducting the same business within the said District and is, therefore, unconstitutional and void.

4th. That said paragraph 15 of section 6 of said act denies to the defendant the equal protection of the law guaranteed to him by the Constitution of the United States.

7 5th. That said paragraph 15 of section 6 of said act does not afford the defendant the equal protection of the law in that it does not impose a uniform license tax upon all persons engaged in the business of a general broker in the District of Columbia, but discriminates in favor of general brokers who are members of a stock exchange outside of said District and doing business therein.

6th. That the alleged distinction of class between general brokers who are members of a stock exchange outside of the District of Columbia and required to pay under said act one hundred dollars for a general broker's license, and those who conduct the same business but are not members of a stock exchange outside of the District of Columbia and are required to pay two hundred and fifty dollars for a general broker's license, is unreasonable and unjust and said act making said distinction is unconstitutional and void.

But the judge refused to grant said motion and the defendant, by his counsel, then and there excepted to the ruling of the court and the exception was noted by the judge on his minutes before the rendition of judgment herein.

After the noting of said exception and making the same a part of

the record which is also made a part hereof, the presiding judge held the defendant guilty and fined and imposed a penalty by judgment on the defendant of a fine of one hundred and fifty dollars, from which judgment the defendant then and there noted an appeal.

And, thereupon, all the exceptions having been taken and noted as above indicated and the defendant having, at the time of each and every one of the said exceptions to the ruling of the court above set forth, caused note to be made of his intention to apply to the Court of Appeals of the District of Columbia for a writ of
8 error herein, and because *of* the matters and things hereinbefore recited are not matters of record and in order that the defendant may have this case reviewed in the Court of Appeals on this his bill of exceptions, the defendant prays the court to sign and seal this his bill of exceptions according to the statute in such case made and provided, and it is accordingly done, now for then, this 31st day of December, A. D. 1902.

CHARLES S. BUNDY, *Act'g Judge.*

9 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, Joseph Y. Potts, clerk of the police court of the District of Columbia, do hereby certify *that* the foregoing pages, numbered from 1 to 8 inclusive, to be true copies of originals in cause No. 227,355 wherein The District of Columbia is plaintiff and Robinson Lappin defendant, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, — the city of Washington, in said District, this 20th day January, A. D. 1903.

[Seal Police Court of District of Columbia.]

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

10 (*Transcript of Record.*)

In the Police Court of the District of Columbia, September Term, 1902.

DISTRICT OF COLUMBIA *vs.* ROBINSON LAPPIN. } No. 227,335. Information for Unlicensed General Broker.

October 11, 1902.—Demurrer to information filed.

October 25, 1902.—Demurrer to information argued and overruled. Defendant arraigned. Plea: Not guilty.

December 9, 1902.—Agreed statement of facts filed.

December 31, 1902.—Case submitted to court on agreed statement of facts. Judgment: Guilty. Sentence: To pay a fine of one hundred and fifty dollars, and in default, to be committed to the workhouse for the term of thirty days.

Exceptions taken to the rulings of the court on matters of law and notice given by the defendant in open court at the time of the several rulings of his intention to apply to a justice of the Court of Appeals, D. C., for a writ of error.

Bill of exceptions filed, settled and signed.

Recognizance in the sum of two hundred dollars entered into on writ of error to the Court of Appeals, D. C., upon the *the* condition that in the event of the denial of the application for a writ of error, the defendant will, within five days next after the expiration of ten days, appear in the police court and abide by and perform its judgment, and that in the event of the granting of such writ of error, the

11 defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises. The Citizens' Trust and Guaranty Company of West Virginia, surety.

Thereupon proceedings stayed for ten days.

January 13, 1903.—Writ of error received from the Court of Appeals of the District of Columbia.

JANUARY 20, 1903.

I hereby certify, under the seal of this court, that the foregoing is a true copy of the record of proceedings had in the police court in the above-entitled case.

[Seal Police Court of District of Columbia.]

N. C. HARPER,
Deputy Clerk of the Police Court of the District of Columbia.

12 UNITED STATES OF AMERICA, *ss*:

The President of the United States to the Honorable Charles S. Bundy, judge of the police court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court, before you, between The District of Columbia, plaintiff and Robinson Lappin, defendant, a manifest error hath happened, to the great damage of the said defendant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days

from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Seal Court of Appeals, District of Columbia.

Witness the Honorable Richard H. Alvey, Chief Justice of the said Court of Appeals, the 13th day of January, in the year of our Lord one thousand nine hundred and three.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by—

M. F. MORRIS,
Associate Justice of the Court of Appeals of the District of Columbia.

Endorsed on cover: District of Columbia police court. No. 1276. Robinson Lappin, plaintiff in error, *vs.* The District of Columbia. Court of Appeals, District of Columbia. Filed Jan. 21, 1903. Robert Willett, clerk.

Court of Appeals, District of Columbia.

APRIL TERM, 1903.

No. 1276.

No. 14. Special Calendar.

ROBINSON LAPPIN, PLAINTIFF IN ERROR.

vs.

THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEE.

A. B. DUVALL,
E. H. THOMAS,
Attorneys for the District of Columbia.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 6413

Court of Appeals, District of Columbia.

APRIL TERM, 1903.

No. 1276.

No. 14, Special Calendar.

ROBINSON LAPPIN, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

The plaintiff in error was prosecuted in the police court for engaging in the business of a general broker without having first paid the tax required by the act of Congress approved July 1, 1902. The portion of the act in question is contained in paragraph 15, section 6 (Statutes, 1st sess., 57th Congress, page 621), and is as follows:

Par. 15. "General brokers shall pay a tax of two hundred and fifty dollars per annum. Every firm, person, company, or association not incorporated (except insurance and real-estate brokers acting as such) that solicits business from the general public by advertisement or otherwise, and that purchases, sells, or negotiates for others securities, shares, stocks, bonds, exchange, bullion, coin, money, bank

notes, or promissory notes, or that deals in futures on market quotations of prices or values on merchandise, shares, stocks, bonds, or other securities, or accepts margins on prices or values of said shares, stocks, bonds, merchandise, or securities, shall be deemed a general broker: *Provided,* That the Washington Stock Exchange, through its president or treasurer, shall pay to the collector of taxes of the District of Columbia a sum equal to five hundred dollars per annum in lieu of tax on the members thereof for business done on said exchange: *Provided further*, That any broker who is a member of a regularly organized stock exchange located outside of the District of Columbia and transacting a brokerage business therein, shall pay a sum equal to one hundred dollars per annum to the collector of taxes of the District of Columbia: *And be it further provided,* That if any person or firm shall have paid the tax in this section provided for banks and bankers, such person or firm shall not again be taxed as a broker or brokers."

To this information the plaintiff in error interposed a demurrer, which is found on page 2 of the record. The grounds of demurrer appear to be that the act of Congress is unconstitutional and void, because it is asserted that such act imposed a tax upon the accused as a general broker which is not imposed on all other general brokers; that the act does not impose a uniform tax upon all of the same class conducting the same business, and that the act does not afford equal protection of the laws because, it is asserted, it does not impose a uniform license tax upon all persons engaged in the business of general brokers, but discriminates in favor of general brokers who are members of a stock exchange outside of the District of Columbia and doing business therein. This demurrer was overruled (Record, bottom of page 5), and the action of the court in that regard is the ground of the first assignment of error in this cause.

The cause was tried on an agreed statement of facts, which is found on page 3 of the record. There was also a motion

to dismiss on substantially the same grounds as those contained in the demurrer, which was overruled by the court (Record, p. 4), and the action of the court in that regard is the subject of the second assignment of errors.

Thereupon the court entered a judgment of "guilty" and a sentence "to pay a fine of one hundred and fifty dollars, and in default to be committed to the workhouse for the term of thirty days" (Record, top of page 6). This judgment and sentence is the basis of the third assignment of error.

The plaintiff in error, as appears (Record, p. 3), is a general broker within the identical terms of the enacting clause of said paragraph 15, but he is not a member of any stock exchange whatever. We contend, inasmuch as the agreed statement of facts omits to so state, that he never was such member. It does, however, affirmatively appear that at the times charged in the information he was "not a member of a regularly organized stock exchange located outside of the District of Columbia."

I.

There is a distinction of class between a general broker as defined in said act of Congress and a broker who is a member of a regular stock exchange.

The above proposition, the court will observe, is the opposite to the first contention of counsel for the plaintiff in error.

Assuming for the sake of the argument, that the provisions of the fourteenth amendment of the Constitution of the United States, that "*No State* shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State* deprive any person of life, liberty, or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the laws," is applicable to the present situation, the Supreme Court of the United States has held that a State may, in its wisdom, *classify property for the purposes of taxation.*

In a recent case, Connally *vs.* Union Sewer Pipe Co., that court said:

"The power to tax persons and property is an incident of sovereignty, and the extent to which it may be exerted has been indicated in numerous cases. Taxing laws, it has been well said, furnish the measure of every man's duty in support of the public burdens and the means of enforcing it. A tax may be imposed only upon certain callings and trades, for when the State exerts its power to tax it is not bound to tax all pursuits or all property that may be legitimately taxed for governmental purposes. It would be an intolerable burden if a State could not tax any property or calling unless, at the same time, it taxed all property or all callings. Its discretion in such matters is very great and should be exercised solely with reference to the general welfare as involved in the necessity of taxation for the support of the State. A State may, in its wisdom, *classify property for purposes of taxation*, and the exercise of its discretion is not to be questioned in a court of the United States, so long as the classification does not invade rights secured by the Constitution of the United States. But different considerations control when the State, by legislation, seeks to regulate the enjoyment of rights and the pursuit of callings connected with domestic trade."

Connolly *vs.* Union Sewer Pipe Co., 184 U. S., 563.

"The Congress of the United States, being empowered by the Constitution 'to exercise exclusive legislation in all cases whatsoever' over the seat of the National Government, has the entire control over the District of Columbia for every purpose of Government, *national or local.*"

Capital Traction Co. *vs.* Hof, 174 U. S., 5.

Under the Constitution, Congress has power to exercise exclusive legislation in all cases whatsoever over the District, and this includes the power of taxation.

Mattingly *vs.* D. C., 97 U. S., 687.

Congress has the power to discriminate in taxation in the District of Columbia. It may exempt all property employed for manufacturing purposes (Welch *vs.* Cook, 97 U. S., 541), church property, and "may, at its discretion, exempt certain classes of property from taxation or *may tax them at a lower rate*" (Gibbons *vs.* District of Columbia, 116 U. S., 404).

The power of Congress to legislate for the District of Columbia includes the power to provide for the assessment on abutting lands and lands benefited, arbitrarily, one-half or more of the damage for and in respect of land condemned for the opening of the streets. Such power is to be referred, not to the right of eminent domain, *but to the right of taxation.*

Wight *vs.* Davidson, 181 U. S., 371, and cases cited.

The law reports in this jurisdiction contain instances (Justh *vs.* Holliday, 2 Mackey, 346; Tully *vs.* Morgan, 21 D. C., 88) of the evils of gambling on margins through alleged stock brokers.

This court in Gurley *vs.* MacLennan (17 App. Cases D. C., 182), said :

"The transaction between the parties was in reality a stock-gambling transaction, in which, it may well be assumed, there was no actual intention of the parties at the time, or at any time, to purchase the stock in question outright or at all, but in which the purpose was merely to speculate upon a rise in value, to sell again when there was such a rise, and to settle by the payment of differences. This is sufficiently evidenced by the fact that the purchase was to be upon a 'margin,' although it is sought to dis-

guise the significance of this term by the use of the words 'part payment' as its equivalent; and by the further fact that no sufficient sum of money for the actual purchase of the stock was ever deposited or sought to be deposited with the defendants, or was at any time tendered to them."

It is not claimed in this case, and it nowhere appears from the agreed statement of facts, that the plaintiff in error was connected in any way with any stock exchange. It is not necessary to claim that he is one of that class so well known in this District conducting what is commonly known as a bucket shop, wherein all of the parties gamble on the rise and fall of stocks by means of quotations furnished by a detached wire unconnected with any stock exchange or any member of a stock exchange.

It is sufficient, we submit, to know that such places existed in the District of Columbia when the act in question was passed and now exist therein. Besides, a member of the Washington Stock Exchange or other regularly organized stock exchange, it is fair to presume, has some financial standing, and is amenable to discipline for violation of its rules or expulsion for grave business delinquencies. Surely a membership of a regularly organized stock exchange is of itself a reasonable distinction above curbstone and bucket-shop brokerage. Regulation of the latter business can be justified and distinguished on grounds of public policy and is within the police power. The purpose to protect the community is sufficient justification.

On an analogous subject this court said (Fulton *vs.* District of Columbia, 2 App. Cases D. C., 431–436):

"The purpose of these regulations is the protection of the community against the numerous larcenies and robberies that are the disgrace of our civilization and are of too frequent occurrence in our midst, and which are unfortunately too often promoted by the connivance, conscious or uncon-

scious, of persons engaged in the classes of business which it has been sought to subject to these regulations. The moral sense of the community will sanction any regulations, however severe, that have for their legitimate object the destruction of the nefarious business of receiving stolen goods."

It was not claimed below, nor here asserted by counsel for the plaintiff in error, as far as we observe, that the provision in the act of Congress respecting the Washington Stock Exchange and its members is unconstitutional, either because infringing the rule of uniformity in taxation or as making an unreasonable class distinction.

We submit that the act of Congress divides brokers, for the purpose of taxation, into three classes: (*a*) Brokers who are not members of a regularly organized stock exchange, (*b*) brokers who are members of such exchange, and (*c*) members of the Washington Stock Exchange.

II.

The imposition of a tax of two hundred and fifty dollars per annum on general brokers who are not members of a regularly organized stock exchange, and of one hundred dollars per annum on brokers who are members of such an exchange, constitutes a reasonable classification for purposes of taxation..

So far as we are advised, the cases involving an interpretation of the phrase "the equal protection of the laws" have involved the right of the States by their legislatures to enact discriminating laws.

Two cases in this court involving the authority of the Commissioners to appropriate public space to a public corporation, under police regulations, and excluding private citizens therefrom, but not involving any question of taxation, indirectly touch the question here. The first case is

that of Curry *vs.* D. C. (14 App. D. C., 423), wherein the right of the Commissioners to grant an exclusive license for a hack and cab stand in the neighborhood of the railroad station at the corner of Sixth and B streets northwest was in question, and the second was that of Hazel *vs.* D. C. (16 App., 283), wherein a discrimination against cab-drivers as to one-half of the space mentioned was sustained on the ground that it was a necessary result of the municipal control over the streets and public spaces; that the occupancy of them by cabs and the assignment of portions of them for cab stands should be subjected to strict municipal regulation.

These cases, we contend, do not involve the authority of Congress under the fourteenth amendment, but if they do the latter case is authority to show that a distinction is not arbitrary or unjust which divides the same business into two classes, the one respecting the cab service of a railroad corporation, and the other respecting the same service by individuals engaged in the same business.

The fourteenth amendment was not intended to compel the State to adopt an iron rule of equal taxation (Bell's Gap R. Co. *vs.* Commonwealth of Pa., 134 U. S., 233) or "cast-iron rule" (Florida Central & Peninsular R. Co. *vs.* Reynolds, 183 U. S., 471).

Thus it is the right of the States to exempt certain corporations (Merchants' & Manufacturers' National Bank *vs.* Commonwealth of Pa., 167 U. S., 461), to tax inheritances in accordance with the degrees of relationship (Magoun *vs.* Ill. Trust & Savings Co., 170 U. S., 283), to tax business in accordance with the amount thereof (Clark *vs.* City of Titusville, 184 U. S., 329), to restrict the locality in which a business may be conducted (Barbier *vs.* Connolly, 113 U. S., 27). Requiring a license for elevators and warehouses on a railroad right of way or depot does not deny to the proprietors

the equal protection of the laws because a license is not required for elevators and warehouses differently located, public policy being a sufficient justification (Cargill Co. *vs.* State, 180 U. S., 452).

The equal protection of the laws is not denied an Ohio corporation engaged in the manufacture and sale of oleomargarine within the State of Ohio by the statutes of that State forbidding the manufacture or sale of any oleomargarine which contains coloring matter, although by the Ohio statutes harmless coloring matter may be used in butter; such statutes are considered police regulations (Capital City Dairy Co. *vs.* State, 183 U. S., 238).

In Mo. *vs.* Lewis, 101 U. S., 22, in certain parts of the State an appeal was given from a final judgment of a trial court to the supreme court of the State, while in other parts this was denied, and this discrimination was sustained.

"In Hayes *vs.* Mo., 120 U. S., 71, it appeared that a certain number of peremptory challenges was allowed in cities of over 100,000 inhabitants, while a less number was permitted in other portions of this State. It was held that that was no denial of the equal protection of the laws, the court saying (p. 71, L. ed., 580 Sup. Ct. Rep., 532): 'The fourteenth amendment to the Constitution of the United States *does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate.* It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed.'"

Brown *vs.* New Jersey, 175 U. S., 177.

That a distinction respecting personal character and qualifications for business would not infringe the constitutional requirement was recognized in Yick Wo *vs.* Hopkins, 118 U. S., 356.

The principle of classification by an act of Louisiana imposing a license tax of $3,500 on the business of refining sugar and molasses and exempting planters and farmers refining these products for themselves was held to be a rightful discrimination and not in violation of the fourteenth amendment.

American Sugar Refining Co. *vs.* Louisiana, 179 U. S., 89.

A discrimination against persons engaged in the business of emigrant agents, hiring persons to labor outside of the State, by a statute which imposed a license tax upon them, but not upon persons engaged in hiring laborers to work within the State, was held not to be unconstitutional as a denial of the equal protection of the laws.

Williams *vs.* Fears, 179 U. S., 270.

The court in the latter case (page 275) said:

"It would seem, moreover, that the business itself is of such nature and importance as to justify the exercise of the police power in its regulation. We are not dealing with single instances, but with a general business, and it is easy to see that, if that business is not subject to regulation, the citizen may be exposed to misfortunes from which he might otherwise be legitimately protected."

The equal protection of the laws is not denied to a foreign corporation which manufactures goods in other States and sends them into the State for sale by a tax on the amount of capital employed by it within the State, when the statute makes no discrimination between foreign and domestic corporations.

People *vs.* Roberts, 171 U. S., 658.

"Suppose, for any fair reason affecting only its internal affairs, the State should see fit to wholly exempt certain

named corporations from all taxation. Of course the indirect result would be that all other property might have to pay a little larger rate per cent. in order to raise the revenue necessary for the carrying on of the State government, but this would not invalidate the tax on other property, or give any right to challenge the law as obnoxious to the provisions of the Federal Constitution."

Merchants', etc., Bank *vs.* Pennsylvania, 167 U. S., 463.

The Kansas City Stock Yards case (183 U. S., 79) was a case not at all concerned with the subject of taxation. There the act of the State of Kansas regulating charges in public stock yards *applied only to the defendant corporation*, and to no other companies or corporations engaged in like business, and therefore has no application to the present case.

The difficulty in drawing the line between reasonable and unreasonable classification is illustrated by two cases, neither of which arose under any taxing law, but both were occasioned by a dispute about taxable costs. The first case mentioned is that of Railroad Co. *vs.* Ellis, 165 U. S., 159. In so far as these cases may be applicable to the present discussion, the latter case (A., T. & S. F. R. Co. *vs.* Matthews, 174 U. S., 96) is favorable to our contention.

We submit that the illustrations afforded by the cases to which we have referred, coupled with the presumption in favor of the constitutionality of an act of Congress, even if the fourteenth amendment controls the question, present sufficient to support the tax now contested.

III.

The fourteenth amendment to the Federal Constitution is not applicable.

We understand that the Supreme Court of the United States has held that the jurisdiction of Congress in matters of taxation in the District of Columbia is not controlled by the provisions of this amendment.

"In the present case is involved the constitutionality of an act of Congress regulating assessments on property in the District of Columbia, and in respect to which the jurisdiction of Congress in matters municipal, as well as political, is exclusive, and not controlled by the provisions of the 14th amendment. No doubt, in the exercise of such legislative powers, Congress is subject to the provisions of the 5th amendment to the Constitution of the United States, which provides, among other things, that no person shall be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation. But it by no means necessarily follows that a long and consistent construction put upon the 5th amendment, and maintaining the validity of the acts of Congress relating to public improvements within the District of Columbia, is to be deemed overruled by a decision concerning the operation of the 14th amendment as controlling State legislation."

Wight *vs.* Davidson, 181 U. S., 384.

The first ten amendments to the Federal Constitution contain no restrictions on the powers of the State, but were intended to operate solely on the Federal Government.

Brown *vs.* State of New Jersey, 175 U. S., 172.

Slaughter House cases, 16 Wall., 36.

Prior to 1868 there was no guaranty in the Federal Constitution of the equal protection of the laws as against State action.

The provisions of the fourteenth amendment are addressed in its prohibitions to the States.

Unless, therefore, as it seems to us, the District of Columbia, for the purpose of taxation by Congress, can be considered to be a State, the statute here questioned is not unconstitutional.

The District of Columbia has been held to be a State for some purposes, but for other purposes it has been declared not to be a State.

Two of the illustrations are found in the following cases:

According to the definitions of writers on general law, the District of Columbia, being a separate political community, is a State.

De Geofroy *vs.* Riggs, 133 U. S., 258.

But the District of Columbia is not a State within the meaning of the provision giving courts of the United States cognizance of controversies between citizens of different States.

Hooe *vs.* Jamisson, 166 U. S., 395.

The court in the latter case said (page 397):

"We see no reason for arriving at any other conclusion than that announced by Chief Justice Marshall in Hepburn *vs.* Ellzey, 6 U. S., 2 Cranch, 445, February term, 1805, 'that the members of the American Confederacy are the States contemplated in the Constitution;' that the District of Columbia is not a State within the meaning of that instrument."

We therefore respectfully submit that the judgment of the police court should be affirmed.

A. B. DUVALL,
E. H. THOMAS,
Attorneys for the District of Columbia.